IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 9263 of 2005
Date of decision: 4th April, 2007

M/s Modern Enterprises ...Petitioner

Versus

State of Punjab and others ...Respondents.

CORAM:- HON'BLE MR. JUSTICE K.S.GAREWAL
HON'BLE MR. JUSTICE AJAI LAMBA

Present: Mr. Arun Jain, Advocate,
for the petitioners.

Ms. Charu Tuli, DAG, Punjab.

Mr. RS Khosla, Advocate.

K.S.GAREWAL, J.

Three Civil Writ Petitions came to be filed to challenge proceedings for acquisition of lands of the petitioners. The petitioners are M/s Modern Enterprises (CWP 9263 of 2005), M/s Anand Remedies (CWP 10245 of 2005) and M/s Punjabi Agro Energy Centre (CWP 5310 of 2005).

Originally notification under Section 4 of the Land Acquisition Act 1894 (hereinafter referred to as **the Act**) was issued on October 18, 2002. The stated public purpose mentioned in the notification was setting up an Integrated Township at Baran. Declaration under Section 6 of the Act

was issued on May 2, 2003. Indeed the award was passed on June 26, 2003.

The acquisition was challenged by a number of parties including M/s Punjabi Agro Energy Centre (hereinafter referred to **as PAEC**). The petition was dismissed by the Division Bench on February 10, 2004. The main ground for challenge had been that the petitioners had been discriminated as their lands were acquired but lands of some others, who had set up industries was not acquired. During the course of arguments, the counsel appearing for the respondents submitted that the lands which had been earlier left out had now been acquired under a second notification dated January 15, 2004. Therefore, the Division Bench passed the following order:-

> "...we may clarify here that if the respondents still leave out the land/constructed area, acquisition of which has been made, vide Notification under Section 4 of the Act, dated 15.1.2004, the petitioners shall be at liberty to file a fresh petition on the same cause of action."

At the outset, it may be pointed that lands of M/s Modern Enterprises (hereinafter referred to **as ME**) and Anand Remedies (hereinafter referred to as **AR)** were the parties whose lands were not acquired by the first notification, while land of the PAEC was covered under the notification dated October 18, 2002. Lands of ME and AR came under the second notification dated January 15, 2004, therefore, unless ME and AR succeed it is pointless to refer to the case of PAEC because the second petition was filed after dismissal of the first petition, by relying solely upon the observations of the Hon'ble Division bench quoted above.

Both ME and AR contend that they are running profitable

factories on the land sought to be acquired. ME manufactures chilled rolls while AR manufactures medicines and drugs. Both the petitioners have attached photographs with their respective petitions showing the extent and the quality of constructions. ME has invested more than Rs. 2 crores for constructing the factory and starting the business. The firm is registered under the Punjab General Sales Tax Act and has obtained the consent of the Punjab Pollution Control Board. The factory employs 60 workers who work in rotation and about 200 families are dependent on the employment provided by the firm. Likewise, AR has pleaded that it has invested a substantial amount in raising the factory and starting the business. The firm is also registered under the Punjab General Sales Tax Act, has obtained a drug licence and the consent of the Punjab Pollution Control Board. The factory employs about 30 skilled and unskilled persons who work in rotation and about 100 families are dependent on the employment given by the firm.

When notification under Section 4 dated October 18, 2002 was issued, the lands of both ME and AR were also covered but both these petitioners filed objections under Section 5-A of the Act which led the Land Acquisition Collector to recommend release of their respective factories from acquisition. The recommendation Annexure P/10 in respect of ME, made on December 11, 2002, was as under:-

> "The factory has been established and being run by the objector No. 17. He is manufacturing chilled rolls. This factory is being run on Khasra No. 2096/1491/2 Min (4-1). As per the objector he had invested about Rs. 2 crores and the factory was running for the past three years and in this factory 50 to 60 employees

are working in rotation. This factory is situated on the main road and is in the working condition. At the spot where it is situated on one side, the land is under acquisition. In case it does not effect the planning then it can be considered for release from acquisition. Because in the event of acquisition the objector would claim huge compensation and keeping in view the position at the spot, it may be that litigation starts in the civil court. It is also pertinent to mention here that in case this factory is released from acquisition then the second factory-M/s Modern Industries of Objector No. 17 can be included and this may ease the situation. In case both factories of objector No. 17 and 18 are included there is every likelihood of litigation in the civil court. The government should take both the matters into consideration before taking decision in the matter. Keeping in view the facts and circumstances of the instant case it is however, recommended that while accepting objections of objector No. 18 Modern Enterprises be kept out of acquisition."

Likewise the recommendation in favour of AR was also made on December 11, 2002 and is at Annexure P/12. The recommendation was in the following terms:-

"According to the objector at the spot he has installed factory for making medicines which is running since 1993. It has been seen at the spot that the factory is in running condition and workers were working. Its area falls in Khasra No. 2326/938/1 (1-0). This factory is on the main road. In case it does not

affect planning of the government it can be considered to take the same out of acquisition because by acquiring this factory the Government will have to pay heavy compensation. So the government should take appropriate decision in this regard."

Both the recommendations were accepted. Accordingly when the development plans were finalized and the declaration under Section 6 was issued, both the areas were excluded from acquisition.

It appears that the other landowners including Manjit Kaur filed writ petitions to challenge the acquisition. The petitioners were decided on February 10, 2004. The operative portion of the judgment has been re-produced above. Reference in respect of the notification dated January 15, 2004 was in fact to the cases of ME and AR. It is obvious that the respondents made a volte-face.

According to the learned counsel for the petitioners, a conscious decision had been taken by the respondents earlier which cannot now be over-ruled. Furthermore, it has been argued that in the layout plan prepared by the Director, Town and Country Planning, the petitioners areas had been shown to be exempted because it did not effect the planning of the township and there was no justification whatsoever to acquire the land as acquisition did not serve any public purpose. Both ME and AR made representations to the Chief Administrator, Punjab Urban Planning and Development Authority sometime before the award was pronounced detailing many reasons for releasing the land from acquisition.

The second declaration under Section 6 of the Act was issued on October 5, 2004 and the award was pronounced on May 10, 2005, copy of which has been annexed as Annexure P/19.

The respondents contested the petitions. Patiala Urban Planning and Development Authority (PDA) was also impleaded as respondent and filed a short reply dated September 27, 2005 and pleaded that the earlier notification had been challenged in 37 writ petitions. The main grouse of the petitioners therein was that they had been discriminated because the lands of ME and AR had not been acquired. At that time, the reason for releasing these two units was that heavy compensation would have to be paid to them which may adversely impact on the funding of the project. However, when the 37 petitions came to be filed, the matter was re-considered by the Government and it was felt that non-acquisition of ME and AR indeed amounted to discrimination against the others, therefore, acquisition of these units was also done. This was in compliance with the principles of natural justice and greater public interest. A fresh notification was issued on January 15, 2004.

The petitioners also placed on record the report regarding the finalization of objections sent by the Land Acquisition Collector to the Secretary, PDA on December 11, 2002 as well as the Government's decision accepting the recommendations to exempt the lands of ME and AR dated January 15, 2003. These documents are Annexures P/76 and P/77.

On behalf of the respondents, reference was made to the joint development agreement between PDA and Omaxe Limited for the development of the Integrated Township at Baran, Patiala on public private partnership (PPP) basis. The document was placed on record alongwith the advertisement earlier published inviting bids from interested developers. The comparative statement of the bids opened on September 4, 2006 was also filed. Four parties had applied in response to the advertisement. The

bid of Omaxe was the highest at Rs. 109 crores. Therefore, the joint development agreement had been entered between PDA and Omaxe. These documents have been filed as Annexure A/1 with covering affidavit.

The question which arises in the present petition is whether State can acquire private property for the public purpose of establishing an integrated township and then develop the township on public private partnership (PPP) basis. The original challenge by the 37 petitioners to the acquisition was dispelled by this Court on February 10, 2004 in Manjit Kaur's case CWP 9028 of 2003. The sole ground pressed during the course of arguments was that there had been discrimination in acquiring the land of the petitioners while leaving out the lands of the others where industries had been established (reference was to the exclusion of the lands of ME and AR). Therefore, the public purpose for which the lands were earlier acquired and the latter acquisition relating to ME and AR cannot be gone into at all in the second round of litigation. Nevertheless, the argument regarding discrimination still remains.

It is a typical case of bureaucratic flip-flop by the respondents. First they acquire the land then release it and when an objection is raised regarding obvious discrimination, the Government again acquires the land it had earlier released. However, we do not think any defect can be found in such a procedure. Release of land on an earlier occasion does not and cannot debar its acquisition later for the same public purpose. Learned counsel contends that the land is being taken from individual entrepreneurs and handed over to a colonizer for development and profit. This argument is quite hollow as the joint development agreement entered on November 16, 2006 at Mohali shows that many factors were taken into account by

PDA before entering into the public private partnership agreement. The agreement runs into 131 pages and has 23 articles, covering definitions, interpretations, grant of development rights, condition precedents, obligations and undertakings, general duties and obligations of the parties, independent technical-cum- quality control etc. etc. These clauses cover a wide range of obligations to be performed by the parties.

On behalf of the respondents, it was also submitted that the Integrated Township at Patiala was a part of the plan to develop Patiala as a counter magnet to the National Capital Region of Delhi under the National Capital Region Planning Board Act. The township was to be self sustaining and progressive. It was to help attain an overall balanced pattern of urbanization in the region. PDA had identified the Baran project as one of the projects to promote sustained economic and urban development in Patiala.

PDA had invited reputed developers to develop the township as an integrated knowledge township to form the central hub of residential, IT/Biotech and other commercial infrastructure in Patiala on an approximate area of 340 acres. Therefore, the agreement between the PDA and Omaxe was not a case of outright sale of land to Omaxe for further sale of plots for profit but was part of a plan to develop an integrated township in order to ease urban congestion being experienced in Delhi.

Patiala is to act as a counter magnet and for this urban infrastructure is of primary importance. The township is a part of a larger national plan and a larger national public purpose. As already mentioned above, justiciability of the public purpose cannot be examined in the present petition since this argument was never raised in Manjit Kaur's case.

Both ME and AR have indeed been profitable concerns. The photographs would show machines that can be removed, therefore, both the factories can be re-located. The accounts of the two firms are proof of their successful business but the business is not being acquired, only the land and factory sheds have come under acquisition. When the factories are re-located, the petitioners would be able to re-establish their business at a new place and also get compensation for the land acquired, 4 bighas and 11 biswas with a covered area of 9351 square feet in the case of ME and 1 bigha with a covered area of 3280 square feet in the case of AR.

The only disappointing feature in the present case is the Collector's award which has unfortunately been based on the first award dated June 26, 2003. The amount of compensation under the earlier award was assessed as per the recommendation of the District Price Fixation Committee. The Collector while passing the second award relating to ME and AR ought to have considered the price rise from the date of the first notification but unfortunately it was stated in the award that there had been no increase in the value of these properties. Rs. 13 lacs per acre was awarded with reference to the first notification dated October 18, 2002 and the same amount of compensation of Rs. 13 lacs per acre has been awarded with reference to the second notification dated January 15, 2004.

Collectors while determining compensation are bound to take into consideration factors which are mentioned in Section 23 of the Act and ignore factors mentioned in Section 24 of the Act. This is the clear mandate of Section 17 of the Act. It has been usually observed that Collectors deal with fixation of compensation in a very casual and half hearted manner. In the present case, compensation at Rs. 13 lacs per acre was the compensation

awarded vide ward dated June 26, 2003 based on notification dated October 14, 2002 but surprisingly this was the rate of compensation that was again awarded. Compensation for buildings at Rs. 24.68 lacs was awarded to the parties but the award does not show that the Collector had taken into consideration the compulsion for ME and AR to change the location of their established businesses. This is one of the factors which Courts and Collectors have to consider under Section 23 (1) fifthly.

On account of the above factors, the petitioners had every reason to feel agitated and upset at the acquisition of their land which had earlier been acquired, then released, then re-acquired and finally when the compensation was determined, it was fixed at low rate.

However, we are not inclined to interfere in the cases of ME and AR and quash the notification on any ground pleaded by them. This is because the joint development agreement between PDA and Omaxe for the development of the Integrated Township at Baran on public private partnership (PPP) basis was an extension of the public purpose described in the notifications “setting up of Integrated Township at village Baran.” Ours is a growing economy where people are experiencing the benefit of globalization and a huge flow of goods, services and capital. As the economy expands the peoples expectations shall also grow. The concept of integrated townships shall help people to realize their dreams and provide ultra-modern urban housing infrastructure to the region. These objectives can only be achieved if there are public private partnerships of the type envisaged in the joint development agreement between PDA and Omaxe.

Furthermore as the petitions of ME and AR have been found to be without merit, PAEC's case wherein the main ground for challenge was

the discrimination vis-a-vis ME and AR is equally devoid of merit.

Resultantly, we find no merit in these petitions. Dismissed.

(K.S. GAREWAL)
JUDGE

April 4, 2007 **(AJAI LAMBA)**
prem **JUDGE**